

Remarks

The Examiner's Response to Amendment reveals an overbroad view of the scope of the rejected claims. The Examiner states, "it is noted that the features upon which applicant relies (i.e., 'McBreaty does not disclose dynamic traffic management as claimed, 'predefined preferences', Paper Dated 10/3/05, Page 23, lines 17-21) are not recited in the rejected claim(s)." (Office Action at 4). We ask the Examiner to reevaluate this view in light of the highlighted sections of independent claims 1 and 5, reproduced here:

1. A system for providing **traffic management** on a computer network, wherein a referral provider and a user computer are in communication via the computer network, the **referral provider predefining referral provider preferences via the traffic management system** for routing traffic generated by the user computer's search request transmitted to the referral provider, wherein the routing of the traffic is dependent upon the search request transmitted by the user computer, comprising:

means for establishing an account for the referral provider, wherein the account includes an account name, a unique identification and a password;

at least one traffic management parameter; and

a search referral module, wherein the search referral module analyzes the user computer's search request.

5. A process for **dynamically managing traffic on a network** having a referral provider computer and a user computer, the user computer communicating with the referral provider computer and transmitting a search request to the referral provider computer, comprising:

establishing a participating account, wherein the account is established by the referral provider;

defining traffic management parameters;

analyzing the search request input by the user computer; and
routing traffic to a target location.

Under a correct view of the scope of the claims, Applicant's previous remarks succeeded in distinguishing the art of record. Namely, unlike Applicant's invention, which involves dynamic traffic management over a network, McBrearty addresses the problem of a web surfer who needs quick access to the site-specific search engine of a web site. The example McBrearty gives is the intra-site search engine one might find at <http://www.ibm.com>. McBrearty discloses that sometimes users "enter" a site on a page lacking the site-specific search engine interface. McBrearty discloses providing a "button" on a web browser that will locate the site-specific engine for presentment to the surfer, or if there is none preexisting on the site, that will present the surfer with a generic one.

While McBrearty does mention ordinary use of the site-specific search engine to perform a search, McBrearty does not disclose dynamic traffic management as claimed by Applicant. Namely, Applicant's claim 1 recites a system wherein a referral provider predefines preferences (i.e., traffic management parameters) for routing traffic generated by a user computer's search request transmitted to the referral provider. McBrearty does not disclose a referral provider, or predefining preferences, as claimed. In addition, as the Examiner acknowledged McBrearty lacks a means for establishing an account.

For these reasons, McBrearty also lacks the elements of dependent claims 2-4. Regarding claim 2, since McBrearty does not disclose traffic management parameters, it necessarily does not disclose designated target locations or key

search terms as examples of such parameters. Regarding claim 3, McBrearty does not disclose a search referral module routing traffic to the designated target location as specified by such a traffic management parameter. And regarding claim 4, McBrearty does not disclose comparing user search terms with key search terms which comprise traffic management parameters.


The Examiner cites Boyd for its disclosure of details of implementing an account for a referrer. However, Boyd does not disclose establishing an account for a referral provider as claimed. Boyd's disclosed accounts are associated with hosted incentive marketing — an entirely different field from Applicant's invention having nothing to do with dynamic traffic management in the context of search engines. For example, under Boyd's teachings, a consumer product company might establish an account to keep track of consumer-entered loyalty points. Likewise, the consumer might establish an account related to the consumer product company to enter such loyalty points. Importantly, neither the consumer product company nor the consumer in this context qualifies as a "referral provider." Neither party does anything having the effect of referring a user's network traffic to a third party network location.

To summarize, McBearty lacks several claim limitations. Moreover, Boyd lacks the limitations the Examiner attributes to Boyd. Combining McBearty and Boyd does not result in, or suggest, the claimed inventions.

For the foregoing reasons, Applicant respectfully requests withdrawal of the rejections and early allowance. You are authorized to charge any fees to the undersigned's deposit account (#14-1131).

Respectfully submitted,

Dated: March 13, 2006

A handwritten signature in dark ink, appearing to read 'R. Greenspoon', is written over a horizontal line.

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EXAMINER

WILLETT, STEPHAN F

ART UNIT PAPER NUMBER

2142

DATE MAILED: 03/30/2006

reply due
Notice of Appeal 6-10-06 (Under 2 months)

Please find below and/or attached an Office communication concerning this application or proceeding.

[Signature]

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/029,483

Applicant(s)

BERIKER, JAMES

Examiner

Stephan F. Willett

Art Unit

2142

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 March 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

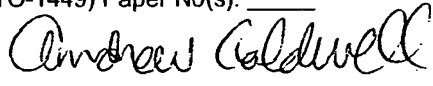
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1-5.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.


ANDREW CALDWELL
SUPERVISOR EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: In response to applicant's arguments, the recitation of "dynamic traffic management" and "predefined preferences" were not exactly recited in the claims, but they also could not have been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). Regarding applicant's remaining arguments, two different readings of *McBreaty* was provided to reject the independent claims. As illustrated above, the applicant is limiting the reading of their claims too much and the previous rejection stands by itself. If there is support for a more limited reading of the claim's words in the specification, the applicant may present such arguments. In addition, arguably Official Notice could have been taken for "establishing" versus "implementing" an account, however a second reference was provided so there would be no question.

RELATED PROCEEDING APPENDIX

There are no appeals or interferences known to Appellant relevant to these proceedings.